United Nations CEDAW/C/KEN/CO/8

Convention on the Elimination of All Forms of Discrimination against Women

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**Committee on the Elimination of Discrimination against Women**

# Concluding observations on the eighth periodic report of Kenya*

1. The Committee considered the eighth periodic report of Kenya (CEDAW/C/KEN/8) at its 1546th and 1547th meetings (see CEDAW/C/SR.1546 and CEDAW/C/SR.1547), held on 2 November 2017. The Committee's list of issues and questions is contained in CEDAW/C/KEN/Q/8 and the responses of Kenya are contained in CEDAW/C/KEN/Q/8/Add.1.

## A. Introduction

2. The Committee appreciates the submission by the State party of its eighth periodic report. It also appreciates the State party's follow-up report (CEDAW/C/KEN/CO/7/Add.1) and its written replies to the list of issues and questions raised by the pre-sessional working group, as well as the oral presentation by the delegation and the further clarifications provided in response to the questions posed orally by the Committee during the dialogue.

3. The Committee commends the State party on its multisectoral delegation, which was headed by the Cabinet Secretary of the Ministry of Public Service, Youth and Gender Affairs, Sicily Kariuki, and included the Permanent Representative of Kenya to the United Nations Office and other international organizations in Geneva, Stephen Ndungu Karau, and representatives of the Ministry for Foreign Affairs and International Trade, the Ministry of Education, the State Department for Social Protection, the Ministry of Environment and Natural Resources, the University of Nairobi, the Council of Governors, the Anti-Female Genital Mutilation Board, the Kenyatta National Hospital and the Women Enterprise Fund.

## B. Positive aspects

4. The Committee welcomes the progress achieved since the consideration in 2011 of the State party's seventh periodic report (CEDAW/C/KEN/7) in undertaking legislative reforms, in particular the adoption of the following:

* Adopted by the Committee at its sixty-eighth session (23 October–17 November 2017).

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(a) Legal Aid Act, in 2016, which enhanced access to justice for women with limited resources by establishing a legal aid scheme;

(b) Protection against Domestic Violence Act, in 2015;

(c) Victim Protection Act, in 2013, which provides for comprehensive support for women who are victims of trafficking;

(d) Prohibition of Female Genital Mutilation Act, in 2011;

(e) National Gender and Equality Commission Act, in 2011.

5. The Committee welcomes the State party's efforts to improve its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, such as the adoption or establishment of the following:

(a) National action plan on women and peace and security, in 2016;

(b) State Department of Gender Affairs, in 2015;

(c) National policy on the prevention of and response to gender-based violence, in 2014;

(d) National Gender and Equality Commission, in 2011;

(e) National gender policy, in 2011.

6. The Committee notes with satisfaction the commitment of the State party to implementing the Sustainable Development Goals. It recalls the importance of indicator 5.1.1 and commends the State party on its efforts to implement sustainable development policies, including measures to combat climate change.

## C. Parliament

7. **The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see the statement by the Committee on its relationship with parliamentarians, adopted at the forty-fifth session, in 2010). It invites Parliament, in line with its mandate, to take the necessary steps regarding the implementation of the present concluding observations between now and the next reporting period under the Convention.**

## D. Principal areas of concern and recommendations

### Discriminatory religious and customary laws

8. The Committee commends the State party for its progressive Constitution. However, it reiterates the concern expressed in its general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution, that the preservation of multiple legal systems is in itself discriminatory against women, and expresses its concern that the legal framework in the State party, including exemptions under article 45 of the Constitution and article 49 (3) of the Marriage Act of 2014, discriminates against Muslim women and women in customary marriages, including through the explicit exemption of the kadhi courts from constitutional equality provisions and the fact that women cannot serve as kadhis, as well as the legalization of polygamy, in violation of the non-discrimination provisions

of the Constitution and the Convention, and counter to general recommendations No. 21 (1994) on equality in marriage and family relations and No. 29.

9. **In line with articles 1 and 2 of the Convention and target 5.1 of the Sustainable Development Goals, the Committee recalls its previous concluding observations (CEDAW/C/KEN/CO/7, para. 12 (d)) and recommends that the State party:**

(a) **Repeal or amend discriminatory provisions under religious and customary law in order to harmonize them with article 16 of the Convention;**

(b) **Codify Muslim family law in a manner that is compatible with article 27 of the Constitution and articles 1, 2 and 16 of the Convention;**

(c) **Appoint Muslim women as kadhis and alternative dispute resolution mediators in the kadhi court system.**

### Anti-discrimination legislation

10. The Committee notes with concern the lack of comprehensive anti-discrimination legislation in the State party, including the absence of clear and complete protection against intersectional discrimination in the Constitution, and the fact that homosexual acts remain criminalized.

11. **In line with general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, the recommendation accepted by Kenya during the universal periodic review process in 2015 (A/HRC/29/10, para. 142.41) on the adoption of a comprehensive anti-discrimination law affording protection to all individuals and the statement by the State party during the dialogue regarding public consultations on comprehensive legislation and the hope that homosexuality would find a place in it, the Committee recommends that the State party exercise due diligence to protect all women, including lesbian, bisexual and transgender women and intersex persons, against discrimination by adopting comprehensive anti-discrimination legislation affording such protection.**

### Women human rights defenders

12. The Committee is concerned about the shrinking space for civil society in the State party, expressed among other things by threats to the lives, security and work of women human rights defenders, including during the electoral process, as well as limitations on foreign funding and administrative limitations imposed on civil society organizations. It is also concerned about the failure to implement recommendations made by the Truth, Justice and Reconciliation Commission in its final report in 2013.

13. **In line with recommendations accepted by the State party during the universal periodic review process in 2015 (A/HRC/29/10, para. 142), the Committee recommends that the State party:**

(a) **Adopt and implement, without delay, effective measures to protect women human rights defenders and thereby enable them to carry out their work freely and without fear of harassment, violence or intimidation or the threat thereof;**

(b) **Rescind the limit on foreign funding of non-governmental organizations;**

(c) **Effectively investigate all cases of harassment, violence and intimidation against women human rights defenders, prosecute and adequately punish the perpetrators and provide effective remedies to victims;**

(d) **Ensure the effective implementation of the recommendations of the Truth, Justice and Reconciliation Commission, in a manner that prioritizes women's rights.**

**National machinery for the advancement of women**

14. The Committee notes the measures taken by the State party to strengthen the national machinery for the advancement of women, including the establishment of the National Gender and Equality Commission, the Kenya National Commission on Human Rights and the Commission on Administrative Justice (Office of the Ombudsman), in 2011. However, it is concerned about the limited resources available to them, their limited mandates and barriers that prevent them from functioning effectively, such as the lack of a complaint and enforcement mechanism in the National Gender and Equality Commission. It is also concerned about the lack of disaggregated data collected by the State party on the situation of women and girls.

15. **The Committee recommends that the State party:**

(a) **Strengthen coordination between the State Department of Gender Affairs and the National Gender and Equality Commission and provide them with adequate resources;**

(b) **Equip the National Gender and Equality Commission with a complaint mechanism and the authority to issue rulings that are binding;**

(c) **Collect and publish data disaggregated by sex, gender, ethnicity, disability and age in order to inform policy and programmes on women and girls, as well as to assist in the tracking of progress in the achievement of the gender-related targets of the Sustainable Development Goals.**

**Temporary special measures**

16. The Committee is concerned that, seven years after the adoption of the new Constitution, the rule that no more than two thirds of representatives of elective public bodies are to be of the same gender (the two-thirds gender rule), is still not being implemented. It notes with concern that temporary special measures are not sufficiently applied as a necessary strategy to accelerate the achievement of substantive equality between women and men in all areas covered by the Convention, especially in the case of women and girls with disabilities and rural women.

17. **In line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party ensure the application of the constitutional two-thirds gender rule and the use of temporary special measures to improve the situation of women and girls with disabilities and rural women, accompanied by sanctions for non-compliance, with a view to achieving substantive equality of women and men in all elected and appointed positions, as well as all areas of public life, and also that it set time-bound targets and allocate sufficient resources for the implementation of such temporary special measures.**

**Stereotypes and harmful practices**

18. The Committee notes the steps taken by the State party to counter discriminatory stereotypes and harmful practices against women and girls, including increased awareness-raising, particularly among men, and the elimination of discriminatory gender stereotypes in school curricula. It remains concerned, however, about the persistence of discriminatory stereotypes with regard to the roles and responsibilities of women and men in the family and in society, as well as harmful practices, such as child and forced marriage, female genital mutilation, polygamy, bride price and widowhood rites such as widow inheritance. It is particularly alarmed by the practice of raping girls, known as "beading", which is prevalent among the Samburu people and justified as a cultural practice, and its consequences, including unsafe, forced abortions.

19. **Recalling joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices and in line with target 5.3 of the Sustainable Development Goals, to eliminate all harmful practices, the Committee recommends that the State party:**

(a) **Develop and implement a comprehensive strategy to eliminate harmful practices and stereotypes that discriminate against women, including through more awareness-raising campaigns for community and religious leaders and the general public and by prosecuting and adequately punishing perpetrators;**

(b) **Take immediate measures, including severe sentences for perpetrators, to eliminate the harmful practice of child rape ("beading");**

(c) **Provide systematic training for judges, prosecutors, legal professionals, law enforcement officials and medical personnel on the strict application of criminal law provisions to punish child and forced marriage, female genital mutilation, child rape ("beading") and widow inheritance, and raise awareness about the criminal nature of such practices and their adverse effect on women's rights;**

(d) **Ensure that women who are victims of harmful practices can file complaints without fear of retribution or stigma and have access to effective remedies and victim support, such as legal, social, medical and psychological assistance and shelters.**

**Female genital mutilation**

20. The Committee commends the State party on the enactment of the Prohibition of Female Genital Mutilation Act of 2011. It remains concerned, however, that this harmful practice continues to be common in some communities. It notes with concern the lack of accurate data, relatively low level of prosecutions and continued impunity of perpetrators, as well as reports according to which medical practitioners are now carrying out the procedure (the "medicalization" of female genital mutilation).

21. **Recalling its previous concluding observations (**CEDAW/C/KEN/CO/7, **para. 20) and its general recommendation No. 14 (1990) on female circumcision, the Committee recommends that the State party:**

**(a) Ensure that the Prohibition of Female Genital Mutilation Act is widely known and implemented, and that perpetrators of female genital mutilation, including medical practitioners, are prosecuted and adequately punished;**

**(b) Take measures to eradicate female genital mutilation, including through increased awareness-raising among religious and traditional leaders and the general public, in cooperation with civil society, about the criminal nature of the procedure, its adverse effect on the human rights of women and the need to eradicate it and its underlying cultural justifications;**

**(c) Update the 2010 female genital mutilation policy.**

**Gender-based violence against women**

22. The Committee welcomes the adoption of the Protection against Domestic Violence Act of 2015. However, it remains concerned about the high level of gender-based violence against women and girls and the widespread incidence of sexual violence, including rape, in the private and public spheres. It is also concerned about underreporting by victims, owing to, among other things, law enforcement and medical staff illegally charging victims for reporting forms, especially in the case of disadvantaged groups of women and women in informal settlements, and the low prosecution rate in cases of gender-based violence against women.

23. **Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and in line with target 5.2 of the Sustainable Development Goals, to eliminate all forms of violence against all women and girls in the public and private spheres, the Committee recommends that the State party:**

**(a) Ensure the strict enforcement of the Protection against Domestic Violence Act, including through the allocation of adequate human and financial resources;**

**(b) Increase the investigation, prosecution and conviction rates in cases of sexual and gender-based violence throughout the State party, including in informal settlements and in camps for internally displaced persons and refugees;**

**(c) Ensure that victims, including disadvantaged groups of women and women in informal settlements, are not charged for obtaining reporting and medical forms, including P3 forms;**

**(d) Establish additional shelters and strengthen existing shelters run by non-governmental organizations, including through adequate financial support, and ensure their accessibility to women and girls who are victims of gender-based violence, especially in remote areas, and to those with disabilities;**

**(e) Provide the judiciary, prosecutors, the police and other law enforcement officials with adequate training on women's rights and on gender-sensitive investigation and interrogation procedures in cases of gender-based violence against women, and train all humanitarian, military and police personnel on the prevention of sexual violence and on codes of conduct with regard to sexual exploitation and abuse.**

**Gender-based violence against women during the election process**

24. The Committee is concerned about reports of election-related gender-based violence, including of a sexual nature, such as gang rapes, against women during the

elections in 2017. It is equally concerned about reports that the majority of perpetrators were police officers or members of other security forces and by the lack of reparation provided to victims. It notes with concern the delays in prosecuting perpetrators and providing redress to the victims of such violence and the State party's apparent lack of commitment in that regard, notwithstanding the recommendations of the Commission of Inquiry into Post-Election Violence of 2007/2008.

25. **The Committee recommends that the State party:**

(a) **Prosecute the perpetrators of the gender-based violence, including of a sexual nature, that was committed after the elections of 2007 and during those of 2017, and ensure the full implementation of the report of the Commission of Inquiry;**

(b) **Ensure adequate provision of reparations and provide assistance, including psychological and physical support, to women who have fallen victim to such violence;**

(c) **Ensure a human rights-based approach to law enforcement during elections and issue guidelines on the protection of women and girls, including in educational institutions, during elections.**

### Trafficking

26. The Committee notes with appreciation the efforts made by the State party to combat trafficking in persons and protect victims of trafficking, including the adoption of the Victim Protection Act of 2013 and capacity-building for diplomatic staff. However, it is concerned that women and girls, including in refugee camps, remain at risk of trafficking for purposes of sexual exploitation or forced domestic labour. It is also concerned about the low level of prosecutions of traffickers, particularly under the Counter-Trafficking in Persons Act of 2010.

27. **The Committee recommends that the State party:**

(a) **Address the root causes of trafficking and exploitation of women and girls by improving their economic situation;**

(b) **Conduct public awareness-raising campaigns, particularly in rural and traditional communities, on the risk of trafficking in persons for women and girls;**

(c) **Strictly enforce the Counter-Trafficking in Persons Act by investigating, prosecuting and punishing perpetrators of trafficking and exploitation of women and girls and enforce the Victim Protection Act;**

(d) **Continue to provide training for law enforcement and border personnel on the early identification of victims of trafficking and their referral to appropriate services;**

(e) **Provide adequate resources for support services, including shelters, for victims of trafficking;**

(f) **Enhance bilateral, regional and international cooperation to prevent trafficking, including by exchanging information and harmonizing legal procedures to prosecute traffickers.**

**Exploitation of prostitution**

28. The Committee is concerned that women in prostitution run a heightened risk of gender-based violence, including abuse by the police, murder, gang rape, extortion, robbery, forced sex practices and forced non-usage of condoms. The Committee notes with concern the widely held prejudices against women in prostitution and that they face fines or arrest when they seek access to justice, social services and health care.

29. **The Committee recommends that the State party:**

(a) **Take measures to eliminate violence against women in prostitution, including by the police, and ensure that they can report such violence without fear of retribution or stigma;**

(b) **Decriminalize women in prostitution and remove all types of liability, including fines, for them;**

(c) **Ensure the prosecution and adequate punishment of perpetrators of violence, including murder, against women in prostitution;**

(d) **Prohibit mandatory testing for HIV and sexually transmitted infections of women in prostitution following arrest, while encouraging them to undergo voluntary testing;**

(e) **Adopt and implement adequately resourced programmes and other appropriate measures to create educational and employment opportunities for women at risk of entering prostitution and exit programmes for those who wish to leave;**

(f) **Carry out educational and awareness-raising measures targeted at the general public, in particular men and boys, to reduce the demand for prostitution. Such measures should focus on combating all notions of the subordination of women and all forms of objectification of women.**

**Participation in political and public life**

30. The Committee regrets that, notwithstanding the constitutional two-thirds gender rule and the presidential decree on affirmative action of 2006, gender parity has not been achieved for elected or appointed offices. It is concerned about barriers that prevent women from participating in political and public life on an equal basis with men, including threats and violence at all levels of political and public life.

31. **In line with its general recommendation No. 23 (1997) on women in political and public life, the Committee recommends that the State party pursue sustained policies to promote the full and equal participation of women in decision-making at the national and local levels and:**

(a) **Immediately put in place the institutional and legal framework required to implement the presidential decree and the two-thirds gender rule;**

(b) **Provide capacity-building on leadership skills and campaign financing to women candidates;**

(c) **Increase measures to ensure that women can safely vote during elections;**

(d) **Ensure that political parties which are not compliant with the two-thirds gender rule are unable to gain access to funds, in line with the Political**

**Parties Act of 2011, and provide incentives to parties that include an equal number of women and men on their electoral lists and at equal ranks;**

**(e) Investigate threats and violence directed against women in relation to political processes and prosecute and appropriately sanction the perpetrators;**

**(f) Remove barriers to the appointment of women to ambassadorial posts and increase the number of women in such posts;**

**(g) Raise awareness among politicians, the media, traditional leaders and the general public of the fact that the full, equal, free and democratic participation of women on an equal basis with men in political and public life is a requirement for the effective implementation of the Convention, as well as the political stability and economic development of the country.**

### Nationality

32. The Committee commends the State party on its decision to issue identity cards and title deeds to the Makonde and Nubian peoples and takes note of its declared intention to do the same for other stateless peoples, such as the Pemba and the Warundi. However, it is concerned that many women and girls in the State party remain stateless or face challenges in the enjoyment of their right to nationality, including the fact that:

(a) Asylum-seeking and stateless women who marry Kenyan men face difficulties in obtaining citizenship for themselves and their children;

(b) Customary marriages need to be registered in order for an applicant to obtain a passport;

(c) Many women, particularly rural women, face difficulties in obtaining official documents.

33. **The Committee recommends that the State party:**

**(a) Ensure, in line with the Committee's general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, that all refugee and stateless women married to Kenyan nationals may obtain citizenship and confer it on their children without administrative barriers;**

**(b) Issue identity cards and title deeds to stateless persons in the State party, including the Pemba and Warundi peoples, as well as all children born in Kenya to British Overseas citizens;**

**(c) Facilitate the provision of official documents and registration of marriages, especially in rural areas, including through increased resources, technological capacity and the geographical spread of Huduma centres;**

**(d) Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

### Education

34. The Committee notes the measures taken by the State party to improve the access of girls to education, including through the adoption of the Education Act of 2013, the Teachers Service Commission Act of 2012 and the schools sanitary towel programme. It remains concerned, however, about the large number of children out of school, gender disparity in schools, including the lower completion rate for girls

compared with boys owing to, among other things, early pregnancy, female genital mutilation, child and/or forced marriage and a lack of sanitary towels. The Committee is also concerned about the lower number of women attending university compared with men and the lack of data on the disciplines that they pursue, and about the prevalence of sexual violence and harassment directed against girls and adolescents, including those with disabilities, in schools by male teachers and pupils.

35. **Recalling its previous concluding observations (CEDAW/C/KEN/CO/7, para. 32), the Committee recommends that the State party:**

(a) **Implement measures to increase the number of girls and women in secondary and higher education, including through specific measures aimed at ensuring adequate access to education for girls with disabilities;**

(b) **Take effective measures to ensure that girls enrol in and complete education in rural and semi-arid areas and in urban informal settlements;**

(c) **Collect and publish data on the dropout rate for girls and the reasons behind it and address its root causes by facilitating the return to education of victims of gender-based violence, female genital mutilation and child marriage, as well as pregnant girls and young mothers;**

(d) **Increase the offering of incentives available to parents who send their daughters to school and penalties for those who do not;**

(e) **Improve and broaden the provision of sanitary towels to girls;**

(f) **Ensure the full implementation, including through the provision of adequate resources, of the Teachers Service Commission Act and the Children Act of 2001 and, once enacted, the bill on reproductive health care of 2014;**

(g) **Enforce a zero tolerance policy on sexual abuse and harassment in schools and ensure that perpetrators are prosecuted and punished appropriately;**

(h) **Strengthen awareness-raising and training of school personnel and pupils on zero tolerance with regard to gender-based violence, including sexual violence, establish confidential reporting mechanisms and ensure that adequate psychological, medical and legal assistance is provided to all victims.**

### Employment

36. The Committee commends the State party on the introduction of three months' maternity leave and the adoption of a bill on breastfeeding mothers in 2017. However, it is concerned that the need for direct payment of maternity benefits by employers may lead to discrimination against women applicants and that mothers who adopt children or who suffer miscarriages or give birth to stillborn babies are not covered by the Employment Act of 2007. The Committee also notes initiatives to improve conditions for workers in the agricultural and informal sectors, including domestic workers. However, it remains concerned about:

(a) Poor working conditions faced by women domestic workers, including low pay, long hours, exploitation, physical and sexual abuse, and their unawareness of complaint mechanisms;

(b) The situation of women working in agriculture, including on flower farms, and, in particular, their exposure to chemicals and the adverse effects that the latter

have on their fertility and reproductive functions, as well as reports of abuse and longer working hours than for men with no additional remuneration;

(c) The high level of unpaid and unrecognized work done by women;

(d) The fact that legislation prohibiting sexual harassment applies only to employers who hold public office and persons in positions of authority.

37. **The Committee recommends that the State party:**

(a) **Amend the Employment Act of 2007 to extend maternity leave benefits to adoptive mothers and those who suffer miscarriages or have stillborn babies and explicitly prohibit all discrimination against women in employment, including with regard to hiring and promotions, in accordance with the International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention, 1958 (No. 111);**

(b) **Consider adopting an alternative scheme for payment of maternity benefits, such as a national pool;**

(c) **Adopt legislation criminalizing sexual harassment in the workplace and include sanctions for all perpetrators;**

(d) **Create a regulatory framework for the informal and agricultural sectors to provide affected women with access to social protection and monitor their working conditions;**

(e) **Ratify the ILO Domestic Workers Convention, 2011 (No. 189);**

(f) **Conduct research to measure and value the unremunerated work of women, in line with the Committee's general recommendation No. 17 (1991) on measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product.**

### Health

38. The Committee notes the measures taken by the State party to improve women's health, including the free maternity care policy of 2013 and the "Beyond Zero" campaign. However, it remains concerned about the lack of access to high-quality health care for many women, including women with disabilities, women in prostitution and rural women. It also notes with concern the high maternal mortality rate, in part owing to unsafe abortions, and that the State party's restrictive and unclear legal framework on abortion leads women to seek unsafe and illegal abortions. The Committee is further concerned about the practice of post-delivery detention of women and girls who cannot pay medical bills and the high rates of HIV, particularly among women and girls.

39. **Recalling its general recommendation No. 24 (1999) on women and health, the Committee recommends that the State party:**

(a) **Strengthen efforts to reduce the high maternal mortality rate and ensure access for all women, including women with disabilities and women in prostitution, to health-care facilities and medical assistance by trained personnel, especially in rural areas;**

(b) **Increase the human, technical and financial resources allocated to the implementation of the free maternity care policy and establish awareness-raising programmes and ensure their implementation;**

**(c) Extend the free maternity care policy to cover antenatal and postnatal care;**

**(d) Take immediate steps to stop all post-delivery detention for failure to pay medical bills;**

**(e) Amend the Penal Code to decriminalize abortion and legalize it, at least, in cases of rape, incest, severe fetal impairment and risk to the health or life of the pregnant woman, ensure access to high-quality post-abortion care, especially where complications arise from unsafe abortions, and reinstate the Standards for Reducing Morbidity and Mortality from Unsafe Abortion in Kenya of 2012;**

**(f) Include age-appropriate and comprehensive education on sexual and reproductive health and rights, and on responsible sexual behaviour, in school curricula, with a focus on the prevention of early pregnancy and the control of sexually transmitted infections, including HIV, ensure access to modern contraceptives for all, including adolescents, and take measures to ensure that the foregoing information reaches girls who are not in school;**

**(g) Ensure adequate wages and working conditions for health professionals, enact legislation declaring health an essential service and require minimum standards of service delivery during strikes;**

**(h) Revisit and adopt the bill on reproductive health care of 2014;**

**(i) Increase the national budget allocation for health, in line with the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases.**

### Economic empowerment of women

40. The Committee commends the State party on the measures that it has taken to support the economic empowerment of women, including the establishment of the Women Enterprise Fund, the Youth Enterprise Development Fund and the Uwezo Fund, as well as the reservation of 30 per cent of public procurement opportunities for women, young people and persons with disabilities. However, it is concerned about practical barriers preventing women from benefiting from those initiatives, including reports that the Uwezo Fund is difficult to access and lacks clear criteria.

41. **The Committee recommends that the State party:**

**(a) Develop a comprehensive database of all beneficiaries of the above-mentioned funds and of public procurement recipients, with a view to reaching out to women in rural areas and women with disabilities;**

**(b) Take measures to ensure that the funds are accessible to all women, including rural women, through awareness-raising and the introduction of clear criteria for, and the facilitation of, applications.**

### Rural women

42. The Committee is concerned about the high poverty rate among women, their exclusion from decision-making with regard to rural development, discrimination against rural women in relation to property rights and their limited access to high-quality health care, leading to complications such as vesicovaginal fistulae. The Committee is also concerned about the effects of climate change, including the current drought in the State party, on rural women.

43. **Recalling its general recommendation No. 34 (2016) on the rights of rural women and its previous recommendation (CEDAW/C/KEN/CO/7, para. 42), the Committee calls upon the State party:**

(a) **To promote the participation of rural women in decision-making processes and their access to high-quality health care, education and adequate water and sanitation;**

(b) **To facilitate the access of rural women to land, eliminate all customs and traditional practices that impede their equal access to land and establish a clear legislative framework to protect their rights to inheritance and land ownership;**

(c) **To develop and implement a national gender policy on agricultural development as set forth in the agricultural sector development strategy covering the period 2010–2020;**

(d) **To ensure access to high-quality health care for rural women, including through increased training of midwives;**

(e) **To ensure the equal participation of rural women and girls in policymaking processes on disaster mitigation and climate change;**

(f) **To implement the Climate Change Act of 2016 in a manner that prioritizes women's rights.**

### Indigenous women

44. The Committee notes with concern that indigenous women in the State party, including Endorois women, have limited access to traditional lands owing to the failure to implement the ruling of 2010 by the African Commission on Human and Peoples' Rights, which recognized their rights to ancestral land in the Rift Valley, and the lack of consultation with them. It is also concerned about reports of violence, including killings against indigenous women and girls in Baringo County during cattle raids.

45. **The Committee recommends that the State party:**

(a) **Take immediate steps to implement the ruling of the African Commission on Human and Peoples' Rights regarding the rights of the Endorois people to their ancestral land, and ensure consultation with Endorois women during this process;**

(b) **Take all measures necessary to protect indigenous women and girls, including those in Baringo County, from violence and theft, and ensure that the perpetrators are prosecuted and adequately punished.**

### Women and girls with disabilities

46. The Committee is concerned about the failure to protect the health, sexual and reproductive rights of women with disabilities and their lack of access to justice, limits on their legal capacity and ability to own property and violence against them, including the practice of forced sterilization.

47. **The Committee recommends that the State party:**

(a) **Protect the rights of women and girls with disabilities, ensuring that they have equal access to housing, justice, health care and other basic services**

**and social protection, and promote their autonomy, access to community services and participation in political and public life;**

(b) **Protect women and girls with disabilities from all forms of violence and ensure that the perpetrators are prosecuted and adequately punished;**

(c) **Abolish the practice of sterilizing women and girls with disabilities by force and provide remedies for the victims;**

(d) **Guarantee women and girls with disabilities the right to own property and conduct awareness-raising on their rights.**

### Older women

48. The Committee is concerned about the failure to protect older women from violence and abuse and the lack of data on their situation.

49. **The Committee recommends that the State party:**

(a) **Protect older women, including those accused of witchcraft, from all forms of violence, including lynching, and ensure that the perpetrators are prosecuted and adequately punished;**

(b) **Collect and publish data on the situation of older women, including with regard to gender-based violence directed against them.**

### Marriage and family relations

50. The Committee notes that the Marriage Act of 2014 consolidated all marriage regimes in the State party, and that other laws intended to promote equality in marriage have been passed. It remains concerned, however, about:

(a) The fact that the Marriage Act is not in conformity with the Constitution, in that it recognizes polygamy in the context of customary and Muslim marriages;

(b) The requirement to prove contribution to marital property under the Matrimonial Property Act of 2013, which discriminates against women who face challenges proving the existence of and quantifying non-monetary contributions;

(c) The removal of the requirement of spousal consent for transactions relating to marital property;

(d) Discriminatory inheritance laws, including rules governing intestate succession that directly discriminate against women and girls, and the fact that the Law of Succession Act of 1981 renders a widow's inheritance rights void if she remarries, with no parallel provision for widowers;

(e) Discrimination against women married under Islamic law, including the right of men to divorce their wives unilaterally, and reports of abusive behaviour, including the withholding of divorce certificates and forced concessions in return for the divorce certificate;

(f) The requirement under the Marriage Act for all marriages to be registered, failing which they are considered invalid, the strict timelines set for registration, the requirement of consent by both spouses to register and the detrimental effects that that has on the rights of women, including those in polygamous marriages;

(g) Women's lack of access to justice, including upon divorce, owing in particular to their limited resources.

51. **The Committee recommends that the State party:**

(a) **Repeal section 7 of the Matrimonial Property Act and recognize the principle of equality in all areas of marriage, including property;**

(b) **Repeal section 11 of the Land Laws (Amendment) Act of 2016 and reinstate the requirement of spousal consent for any transactions relating to marital property as it was under the Land Registration Act of 2012;**

(c) **Repeal and replace the Law of Succession Act and ensure equal rights between women and men with regard to inheritance and property laws;**

(d) **Ensure equality between women and men in Muslim marriages and upon divorce, abolish the practice of a husband's right to divorce his wife unilaterally and require compulsory registration of all divorces;**

(e) **Raise awareness of the detrimental effects of polygamy on women and bring the Marriage Act into line with article 45 (3) of the Constitution, by prohibiting polygamous marriages;**

(f) **Allow for the division of property during marriage in order to protect the property interests of women when their husbands take subsequent wives;**

(g) **Review the requirement for registration of all marriages in a manner that protects the rights of women, including through awareness-raising and facilitation of registration in rural areas and a progressive timeline for registration and by allowing one spouse to register the marriage, thereby placing the onus on the other spouse to contest its validity;**

(h) **Ensure the full implementation of the Legal Aid Act.**

### Optional Protocol to the Convention and amendment to article 20 (1) of the Convention

52. **The Committee encourages the State party to ratify the Optional Protocol to the Convention and to accept, as soon as possible, the amendment to article 20 (1) of the Convention concerning the meeting time of the Committee.**

### Beijing Declaration and Platform for Action

53. **The Committee calls upon the State party to use the Beijing Declaration and Platform for Action in its efforts to implement the provisions of the Convention.**

### 2030 Agenda for Sustainable Development

54. **The Committee calls for the realization of substantive gender equality, in accordance with the provisions of the Convention, throughout the process of implementation of the 2030 Agenda for Sustainable Development.**

### Dissemination

55. **The Committee requests the State party to ensure the timely dissemination of the present concluding observations, in the official languages of the State party, to the relevant State institutions at all levels (national, regional and local), in particular to the Government, the ministries, Parliament and the judiciary, to enable their full implementation.**

### Technical assistance

56. **The Committee recommends that the State party link the implementation of the Convention to its development efforts and that it avail itself of regional or international technical assistance in this respect.**

### Ratification of other treaties

57. **The Committee notes that the adherence of the State party to the nine major international human rights instruments [1] would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance, to which it is not yet a party.**

### Follow-up to the concluding observations

58. **The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 31 (a) and (d), 39 (e) and 51 (a) above.**

### Preparation of the next report

59. **The Committee invites the State party to submit its ninth periodic report in November 2021. The report should be submitted on time and, in case of delay, cover the entire period up to the time of its submission.**

60. **The Committee requests the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (see** HRI/GEN/2/Rev.6, **chap. I)).**

[1] The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities.

United Nations CEDAW/C/KEN/CO/8

Convention on the Elimination of All Forms of Discrimination against Women

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**Committee on the Elimination of Discrimination against Women**

# Concluding observations on the eighth periodic report of Kenya*

1. The Committee considered the eighth periodic report of Kenya (CEDAW/C/KEN/8) at its 1546th and 1547th meetings (see CEDAW/C/SR.1546 and CEDAW/C/SR.1547), held on 2 November 2017. The Committee's list of issues and questions is contained in CEDAW/C/KEN/Q/8 and the responses of Kenya are contained in CEDAW/C/KEN/Q/8/Add.1.

## A. Introduction

2. The Committee appreciates the submission by the State party of its eighth periodic report. It also appreciates the State party's follow-up report (CEDAW/C/KEN/CO/7/Add.1) and its written replies to the list of issues and questions raised by the pre-sessional working group, as well as the oral presentation by the delegation and the further clarifications provided in response to the questions posed orally by the Committee during the dialogue.

3. The Committee commends the State party on its multisectoral delegation, which was headed by the Cabinet Secretary of the Ministry of Public Service, Youth and Gender Affairs, Sicily Kariuki, and included the Permanent Representative of Kenya to the United Nations Office and other international organizations in Geneva, Stephen Ndungu Karau, and representatives of the Ministry for Foreign Affairs and International Trade, the Ministry of Education, the State Department for Social Protection, the Ministry of Environment and Natural Resources, the University of Nairobi, the Council of Governors, the Anti-Female Genital Mutilation Board, the Kenyatta National Hospital and the Women Enterprise Fund.

## B. Positive aspects

4. The Committee welcomes the progress achieved since the consideration in 2011 of the State party's seventh periodic report (CEDAW/C/KEN/7) in undertaking legislative reforms, in particular the adoption of the following:

* Adopted by the Committee at its sixty-eighth session (23 October–17 November 2017).



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(a) Legal Aid Act, in 2016, which enhanced access to justice for women with limited resources by establishing a legal aid scheme;

(b) Protection against Domestic Violence Act, in 2015;

(c) Victim Protection Act, in 2013, which provides for comprehensive support for women who are victims of trafficking;

(d) Prohibition of Female Genital Mutilation Act, in 2011;

(e) National Gender and Equality Commission Act, in 2011.

5. The Committee welcomes the State party's efforts to improve its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, such as the adoption or establishment of the following:

(a) National action plan on women and peace and security, in 2016;

(b) State Department of Gender Affairs, in 2015;

(c) National policy on the prevention of and response to gender-based violence, in 2014;

(d) National Gender and Equality Commission, in 2011;

(e) National gender policy, in 2011.

6. The Committee notes with satisfaction the commitment of the State party to implementing the Sustainable Development Goals. It recalls the importance of indicator 5.1.1 and commends the State party on its efforts to implement sustainable development policies, including measures to combat climate change.

## C. Parliament

7. **The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see the statement by the Committee on its relationship with parliamentarians, adopted at the forty-fifth session, in 2010). It invites Parliament, in line with its mandate, to take the necessary steps regarding the implementation of the present concluding observations between now and the next reporting period under the Convention.**

## D. Principal areas of concern and recommendations

### Discriminatory religious and customary laws

8. The Committee commends the State party for its progressive Constitution. However, it reiterates the concern expressed in its general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution, that the preservation of multiple legal systems is in itself discriminatory against women, and expresses its concern that the legal framework in the State party, including exemptions under article 45 of the Constitution and article 49 (3) of the Marriage Act of 2014, discriminates against Muslim women and women in customary marriages, including through the explicit exemption of the kadhi courts from constitutional equality provisions and the fact that women cannot serve as kadhis, as well as the legalization of polygamy, in violation of the non-discrimination provisions

of the Constitution and the Convention, and counter to general recommendations No. 21 (1994) on equality in marriage and family relations and No. 29.

9. **In line with articles 1 and 2 of the Convention and target 5.1 of the Sustainable Development Goals, the Committee recalls its previous concluding observations (CEDAW/C/KEN/CO/7, para. 12 (d)) and recommends that the State party:**

(a) **Repeal or amend discriminatory provisions under religious and customary law in order to harmonize them with article 16 of the Convention;**

(b) **Codify Muslim family law in a manner that is compatible with article 27 of the Constitution and articles 1, 2 and 16 of the Convention;**

(c) **Appoint Muslim women as kadhis and alternative dispute resolution mediators in the kadhi court system.**

### Anti-discrimination legislation

10. The Committee notes with concern the lack of comprehensive anti-discrimination legislation in the State party, including the absence of clear and complete protection against intersectional discrimination in the Constitution, and the fact that homosexual acts remain criminalized.

11. **In line with general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, the recommendation accepted by Kenya during the universal periodic review process in 2015 (A/HRC/29/10, para. 142.41) on the adoption of a comprehensive anti-discrimination law affording protection to all individuals and the statement by the State party during the dialogue regarding public consultations on comprehensive legislation and the hope that homosexuality would find a place in it, the Committee recommends that the State party exercise due diligence to protect all women, including lesbian, bisexual and transgender women and intersex persons, against discrimination by adopting comprehensive anti-discrimination legislation affording such protection.**

### Women human rights defenders

12. The Committee is concerned about the shrinking space for civil society in the State party, expressed among other things by threats to the lives, security and work of women human rights defenders, including during the electoral process, as well as limitations on foreign funding and administrative limitations imposed on civil society organizations. It is also concerned about the failure to implement recommendations made by the Truth, Justice and Reconciliation Commission in its final report in 2013.

13. **In line with recommendations accepted by the State party during the universal periodic review process in 2015 (A/HRC/29/10, para. 142), the Committee recommends that the State party:**

(a) **Adopt and implement, without delay, effective measures to protect women human rights defenders and thereby enable them to carry out their work freely and without fear of harassment, violence or intimidation or the threat thereof;**

(b) **Rescind the limit on foreign funding of non-governmental organizations;**

(c) **Effectively investigate all cases of harassment, violence and intimidation against women human rights defenders, prosecute and adequately punish the perpetrators and provide effective remedies to victims;**

(d) **Ensure the effective implementation of the recommendations of the Truth, Justice and Reconciliation Commission, in a manner that prioritizes women's rights.**

### National machinery for the advancement of women

14. The Committee notes the measures taken by the State party to strengthen the national machinery for the advancement of women, including the establishment of the National Gender and Equality Commission, the Kenya National Commission on Human Rights and the Commission on Administrative Justice (Office of the Ombudsman), in 2011. However, it is concerned about the limited resources available to them, their limited mandates and barriers that prevent them from functioning effectively, such as the lack of a complaint and enforcement mechanism in the National Gender and Equality Commission. It is also concerned about the lack of disaggregated data collected by the State party on the situation of women and girls.

15. **The Committee recommends that the State party:**

(a) **Strengthen coordination between the State Department of Gender Affairs and the National Gender and Equality Commission and provide them with adequate resources;**

(b) **Equip the National Gender and Equality Commission with a complaint mechanism and the authority to issue rulings that are binding;**

(c) **Collect and publish data disaggregated by sex, gender, ethnicity, disability and age in order to inform policy and programmes on women and girls, as well as to assist in the tracking of progress in the achievement of the gender-related targets of the Sustainable Development Goals.**

### Temporary special measures

16. The Committee is concerned that, seven years after the adoption of the new Constitution, the rule that no more than two thirds of representatives of elective public bodies are to be of the same gender (the two-thirds gender rule), is still not being implemented. It notes with concern that temporary special measures are not sufficiently applied as a necessary strategy to accelerate the achievement of substantive equality between women and men in all areas covered by the Convention, especially in the case of women and girls with disabilities and rural women.

17. **In line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party ensure the application of the constitutional two-thirds gender rule and the use of temporary special measures to improve the situation of women and girls with disabilities and rural women, accompanied by sanctions for non-compliance, with a view to achieving substantive equality of women and men in all elected and appointed positions, as well as all areas of public life, and also that it set time-bound targets and allocate sufficient resources for the implementation of such temporary special measures.**

**Stereotypes and harmful practices**

18. The Committee notes the steps taken by the State party to counter discriminatory stereotypes and harmful practices against women and girls, including increased awareness-raising, particularly among men, and the elimination of discriminatory gender stereotypes in school curricula. It remains concerned, however, about the persistence of discriminatory stereotypes with regard to the roles and responsibilities of women and men in the family and in society, as well as harmful practices, such as child and forced marriage, female genital mutilation, polygamy, bride price and widowhood rites such as widow inheritance. It is particularly alarmed by the practice of raping girls, known as "beading", which is prevalent among the Samburu people and justified as a cultural practice, and its consequences, including unsafe, forced abortions.

19. **Recalling joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices and in line with target 5.3 of the Sustainable Development Goals, to eliminate all harmful practices, the Committee recommends that the State party:**

(a) **Develop and implement a comprehensive strategy to eliminate harmful practices and stereotypes that discriminate against women, including through more awareness-raising campaigns for community and religious leaders and the general public and by prosecuting and adequately punishing perpetrators;**

(b) **Take immediate measures, including severe sentences for perpetrators, to eliminate the harmful practice of child rape ("beading");**

(c) **Provide systematic training for judges, prosecutors, legal professionals, law enforcement officials and medical personnel on the strict application of criminal law provisions to punish child and forced marriage, female genital mutilation, child rape ("beading") and widow inheritance, and raise awareness about the criminal nature of such practices and their adverse effect on women's rights;**

(d) **Ensure that women who are victims of harmful practices can file complaints without fear of retribution or stigma and have access to effective remedies and victim support, such as legal, social, medical and psychological assistance and shelters.**

**Female genital mutilation**

20. The Committee commends the State party on the enactment of the Prohibition of Female Genital Mutilation Act of 2011. It remains concerned, however, that this harmful practice continues to be common in some communities. It notes with concern the lack of accurate data, relatively low level of prosecutions and continued impunity of perpetrators, as well as reports according to which medical practitioners are now carrying out the procedure (the "medicalization" of female genital mutilation).

21. **Recalling its previous concluding observations (**CEDAW/C/KEN/CO/7, **para. 20) and its general recommendation No. 14 (1990) on female circumcision, the Committee recommends that the State party:**

(a) **Ensure that the Prohibition of Female Genital Mutilation Act is widely known and implemented, and that perpetrators of female genital mutilation, including medical practitioners, are prosecuted and adequately punished;**

(b) **Take measures to eradicate female genital mutilation, including through increased awareness-raising among religious and traditional leaders and the general public, in cooperation with civil society, about the criminal nature of the procedure, its adverse effect on the human rights of women and the need to eradicate it and its underlying cultural justifications;**

(c) **Update the 2010 female genital mutilation policy.**

**Gender-based violence against women**

22. The Committee welcomes the adoption of the Protection against Domestic Violence Act of 2015. However, it remains concerned about the high level of gender-based violence against women and girls and the widespread incidence of sexual violence, including rape, in the private and public spheres. It is also concerned about underreporting by victims, owing to, among other things, law enforcement and medical staff illegally charging victims for reporting forms, especially in the case of disadvantaged groups of women and women in informal settlements, and the low prosecution rate in cases of gender-based violence against women.

23. **Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and in line with target 5.2 of the Sustainable Development Goals, to eliminate all forms of violence against all women and girls in the public and private spheres, the Committee recommends that the State party:**

(a) **Ensure the strict enforcement of the Protection against Domestic Violence Act, including through the allocation of adequate human and financial resources;**

(b) **Increase the investigation, prosecution and conviction rates in cases of sexual and gender-based violence throughout the State party, including in informal settlements and in camps for internally displaced persons and refugees;**

(c) **Ensure that victims, including disadvantaged groups of women and women in informal settlements, are not charged for obtaining reporting and medical forms, including P3 forms;**

(d) **Establish additional shelters and strengthen existing shelters run by non-governmental organizations, including through adequate financial support, and ensure their accessibility to women and girls who are victims of gender-based violence, especially in remote areas, and to those with disabilities;**

(e) **Provide the judiciary, prosecutors, the police and other law enforcement officials with adequate training on women's rights and on gender-sensitive investigation and interrogation procedures in cases of gender-based violence against women, and train all humanitarian, military and police personnel on the prevention of sexual violence and on codes of conduct with regard to sexual exploitation and abuse.**

**Gender-based violence against women during the election process**

24. The Committee is concerned about reports of election-related gender-based violence, including of a sexual nature, such as gang rapes, against women during the

elections in 2017. It is equally concerned about reports that the majority of perpetrators were police officers or members of other security forces and by the lack of reparation provided to victims. It notes with concern the delays in prosecuting perpetrators and providing redress to the victims of such violence and the State party's apparent lack of commitment in that regard, notwithstanding the recommendations of the Commission of Inquiry into Post-Election Violence of 2007/2008.

25. **The Committee recommends that the State party:**

(a) **Prosecute the perpetrators of the gender-based violence, including of a sexual nature, that was committed after the elections of 2007 and during those of 2017, and ensure the full implementation of the report of the Commission of Inquiry;**

(b) **Ensure adequate provision of reparations and provide assistance, including psychological and physical support, to women who have fallen victim to such violence;**

(c) **Ensure a human rights-based approach to law enforcement during elections and issue guidelines on the protection of women and girls, including in educational institutions, during elections.**

### Trafficking

26. The Committee notes with appreciation the efforts made by the State party to combat trafficking in persons and protect victims of trafficking, including the adoption of the Victim Protection Act of 2013 and capacity-building for diplomatic staff. However, it is concerned that women and girls, including in refugee camps, remain at risk of trafficking for purposes of sexual exploitation or forced domestic labour. It is also concerned about the low level of prosecutions of traffickers, particularly under the Counter-Trafficking in Persons Act of 2010.

27. **The Committee recommends that the State party:**

(a) **Address the root causes of trafficking and exploitation of women and girls by improving their economic situation;**

(b) **Conduct public awareness-raising campaigns, particularly in rural and traditional communities, on the risk of trafficking in persons for women and girls;**

(c) **Strictly enforce the Counter-Trafficking in Persons Act by investigating, prosecuting and punishing perpetrators of trafficking and exploitation of women and girls and enforce the Victim Protection Act;**

(d) **Continue to provide training for law enforcement and border personnel on the early identification of victims of trafficking and their referral to appropriate services;**

(e) **Provide adequate resources for support services, including shelters, for victims of trafficking;**

(f) **Enhance bilateral, regional and international cooperation to prevent trafficking, including by exchanging information and harmonizing legal procedures to prosecute traffickers.**

**Exploitation of prostitution**

28. The Committee is concerned that women in prostitution run a heightened risk of gender-based violence, including abuse by the police, murder, gang rape, extortion, robbery, forced sex practices and forced non-usage of condoms. The Committee notes with concern the widely held prejudices against women in prostitution and that they face fines or arrest when they seek access to justice, social services and health care.

29. **The Committee recommends that the State party:**

(a) **Take measures to eliminate violence against women in prostitution, including by the police, and ensure that they can report such violence without fear of retribution or stigma;**

(b) **Decriminalize women in prostitution and remove all types of liability, including fines, for them;**

(c) **Ensure the prosecution and adequate punishment of perpetrators of violence, including murder, against women in prostitution;**

(d) **Prohibit mandatory testing for HIV and sexually transmitted infections of women in prostitution following arrest, while encouraging them to undergo voluntary testing;**

(e) **Adopt and implement adequately resourced programmes and other appropriate measures to create educational and employment opportunities for women at risk of entering prostitution and exit programmes for those who wish to leave;**

(f) **Carry out educational and awareness-raising measures targeted at the general public, in particular men and boys, to reduce the demand for prostitution. Such measures should focus on combating all notions of the subordination of women and all forms of objectification of women.**

**Participation in political and public life**

30. The Committee regrets that, notwithstanding the constitutional two-thirds gender rule and the presidential decree on affirmative action of 2006, gender parity has not been achieved for elected or appointed offices. It is concerned about barriers that prevent women from participating in political and public life on an equal basis with men, including threats and violence at all levels of political and public life.

31. **In line with its general recommendation No. 23 (1997) on women in political and public life, the Committee recommends that the State party pursue sustained policies to promote the full and equal participation of women in decision-making at the national and local levels and:**

(a) **Immediately put in place the institutional and legal framework required to implement the presidential decree and the two-thirds gender rule;**

(b) **Provide capacity-building on leadership skills and campaign financing to women candidates;**

(c) **Increase measures to ensure that women can safely vote during elections;**

(d) **Ensure that political parties which are not compliant with the two-thirds gender rule are unable to gain access to funds, in line with the Political**

**Parties Act of 2011, and provide incentives to parties that include an equal number of women and men on their electoral lists and at equal ranks;**

**(e) Investigate threats and violence directed against women in relation to political processes and prosecute and appropriately sanction the perpetrators;**

**(f) Remove barriers to the appointment of women to ambassadorial posts and increase the number of women in such posts;**

**(g) Raise awareness among politicians, the media, traditional leaders and the general public of the fact that the full, equal, free and democratic participation of women on an equal basis with men in political and public life is a requirement for the effective implementation of the Convention, as well as the political stability and economic development of the country.**

### Nationality

32. The Committee commends the State party on its decision to issue identity cards and title deeds to the Makonde and Nubian peoples and takes note of its declared intention to do the same for other stateless peoples, such as the Pemba and the Warundi. However, it is concerned that many women and girls in the State party remain stateless or face challenges in the enjoyment of their right to nationality, including the fact that:

(a) Asylum-seeking and stateless women who marry Kenyan men face difficulties in obtaining citizenship for themselves and their children;

(b) Customary marriages need to be registered in order for an applicant to obtain a passport;

(c) Many women, particularly rural women, face difficulties in obtaining official documents.

33. **The Committee recommends that the State party:**

**(a) Ensure, in line with the Committee's general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, that all refugee and stateless women married to Kenyan nationals may obtain citizenship and confer it on their children without administrative barriers;**

**(b) Issue identity cards and title deeds to stateless persons in the State party, including the Pemba and Warundi peoples, as well as all children born in Kenya to British Overseas citizens;**

**(c) Facilitate the provision of official documents and registration of marriages, especially in rural areas, including through increased resources, technological capacity and the geographical spread of Huduma centres;**

**(d) Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

### Education

34. The Committee notes the measures taken by the State party to improve the access of girls to education, including through the adoption of the Education Act of 2013, the Teachers Service Commission Act of 2012 and the schools sanitary towel programme. It remains concerned, however, about the large number of children out of school, gender disparity in schools, including the lower completion rate for girls

compared with boys owing to, among other things, early pregnancy, female genital mutilation, child and or forced marriage and a lack of sanitary towels. The Committee is also concerned about the lower number of women attending university compared with men and the lack of data on the disciplines that they pursue, and about the prevalence of sexual violence and harassment directed against girls and adolescents, including those with disabilities, in schools by male teachers and pupils.

35. **Recalling its previous concluding observations (CEDAW/C/KEN/CO/7, para. 32), the Committee recommends that the State party:**

(a) **Implement measures to increase the number of girls and women in secondary and higher education, including through specific measures aimed at ensuring adequate access to education for girls with disabilities;**

(b) **Take effective measures to ensure that girls enrol in and complete education in rural and semi-arid areas and in urban informal settlements;**

(c) **Collect and publish data on the dropout rate for girls and the reasons behind it and address its root causes by facilitating the return to education of victims of gender-based violence, female genital mutilation and child marriage, as well as pregnant girls and young mothers;**

(d) **Increase the offering of incentives available to parents who send their daughters to school and penalties for those who do not;**

(e) **Improve and broaden the provision of sanitary towels to girls;**

(f) **Ensure the full implementation, including through the provision of adequate resources, of the Teachers Service Commission Act and the Children Act of 2001 and, once enacted, the bill on reproductive health care of 2014;**

(g) **Enforce a zero tolerance policy on sexual abuse and harassment in schools and ensure that perpetrators are prosecuted and punished appropriately;**

(h) **Strengthen awareness-raising and training of school personnel and pupils on zero tolerance with regard to gender-based violence, including sexual violence, establish confidential reporting mechanisms and ensure that adequate psychological, medical and legal assistance is provided to all victims.**

### Employment

36. The Committee commends the State party on the introduction of three months' maternity leave and the adoption of a bill on breastfeeding mothers in 2017. However, it is concerned that the need for direct payment of maternity benefits by employers may lead to discrimination against women applicants and that mothers who adopt children or who suffer miscarriages or give birth to stillborn babies are not covered by the Employment Act of 2007. The Committee also notes initiatives to improve conditions for workers in the agricultural and informal sectors, including domestic workers. However, it remains concerned about:

(a) Poor working conditions faced by women domestic workers, including low pay, long hours, exploitation, physical and sexual abuse, and their unawareness of complaint mechanisms;

(b) The situation of women working in agriculture, including on flower farms, and, in particular, their exposure to chemicals and the adverse effects that the latter

have on their fertility and reproductive functions, as well as reports of abuse and longer working hours than for men with no additional remuneration;

(c) The high level of unpaid and unrecognized work done by women;

(d) The fact that legislation prohibiting sexual harassment applies only to employers who hold public office and persons in positions of authority.

37. **The Committee recommends that the State party:**

(a) **Amend the Employment Act of 2007 to extend maternity leave benefits to adoptive mothers and those who suffer miscarriages or have stillborn babies and explicitly prohibit all discrimination against women in employment, including with regard to hiring and promotions, in accordance with the International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention, 1958 (No. 111);**

(b) **Consider adopting an alternative scheme for payment of maternity benefits, such as a national pool;**

(c) **Adopt legislation criminalizing sexual harassment in the workplace and include sanctions for all perpetrators;**

(d) **Create a regulatory framework for the informal and agricultural sectors to provide affected women with access to social protection and monitor their working conditions;**

(e) **Ratify the ILO Domestic Workers Convention, 2011 (No. 189);**

(f) **Conduct research to measure and value the unremunerated work of women, in line with the Committee's general recommendation No. 17 (1991) on measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product.**

### Health

38. The Committee notes the measures taken by the State party to improve women's health, including the free maternity care policy of 2013 and the "Beyond Zero" campaign. However, it remains concerned about the lack of access to high-quality health care for many women, including women with disabilities, women in prostitution and rural women. It also notes with concern the high maternal mortality rate, in part owing to unsafe abortions, and that the State party's restrictive and unclear legal framework on abortion leads women to seek unsafe and illegal abortions. The Committee is further concerned about the practice of post-delivery detention of women and girls who cannot pay medical bills and the high rates of HIV, particularly among women and girls.

39. **Recalling its general recommendation No. 24 (1999) on women and health, the Committee recommends that the State party:**

(a) **Strengthen efforts to reduce the high maternal mortality rate and ensure access for all women, including women with disabilities and women in prostitution, to health-care facilities and medical assistance by trained personnel, especially in rural areas;**

(b) **Increase the human, technical and financial resources allocated to the implementation of the free maternity care policy and establish awareness-raising programmes and ensure their implementation;**



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**(c) Extend the free maternity care policy to cover antenatal and postnatal care;**

**(d) Take immediate steps to stop all post-delivery detention for failure to pay medical bills;**

**(e) Amend the Penal Code to decriminalize abortion and legalize it, at least, in cases of rape, incest, severe fetal impairment and risk to the health or life of the pregnant woman, ensure access to high-quality post-abortion care, especially where complications arise from unsafe abortions, and reinstate the Standards for Reducing Morbidity and Mortality from Unsafe Abortion in Kenya of 2012;**

**(f) Include age-appropriate and comprehensive education on sexual and reproductive health and rights, and on responsible sexual behaviour, in school curricula, with a focus on the prevention of early pregnancy and the control of sexually transmitted infections, including HIV, ensure access to modern contraceptives for all, including adolescents, and take measures to ensure that the foregoing information reaches girls who are not in school;**

**(g) Ensure adequate wages and working conditions for health professionals, enact legislation declaring health an essential service and require minimum standards of service delivery during strikes;**

**(h) Revisit and adopt the bill on reproductive health care of 2014;**

**(i) Increase the national budget allocation for health, in line with the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases.**

### Economic empowerment of women

40. The Committee commends the State party on the measures that it has taken to support the economic empowerment of women, including the establishment of the Women Enterprise Fund, the Youth Enterprise Development Fund and the Uwezo Fund, as well as the reservation of 30 per cent of public procurement opportunities for women, young people and persons with disabilities. However, it is concerned about practical barriers preventing women from benefiting from those initiatives, including reports that the Uwezo Fund is difficult to access and lacks clear criteria.

41. **The Committee recommends that the State party:**

**(a) Develop a comprehensive database of all beneficiaries of the above-mentioned funds and of public procurement recipients, with a view to reaching out to women in rural areas and women with disabilities;**

**(b) Take measures to ensure that the funds are accessible to all women, including rural women, through awareness-raising and the introduction of clear criteria for, and the facilitation of, applications.**

### Rural women

42. The Committee is concerned about the high poverty rate among women, their exclusion from decision-making with regard to rural development, discrimination against rural women in relation to property rights and their limited access to high-quality health care, leading to complications such as vesicovaginal fistulae. The Committee is also concerned about the effects of climate change, including the current drought in the State party, on rural women.

43. **Recalling its general recommendation No. 34 (2016) on the rights of rural women and its previous recommendation (CEDAW/C/KEN/CO/7, para. 42), the Committee calls upon the State party:**

(a) **To promote the participation of rural women in decision-making processes and their access to high-quality health care, education and adequate water and sanitation;**

(b) **To facilitate the access of rural women to land, eliminate all customs and traditional practices that impede their equal access to land and establish a clear legislative framework to protect their rights to inheritance and land ownership;**

(c) **To develop and implement a national gender policy on agricultural development as set forth in the agricultural sector development strategy covering the period 2010–2020;**

(d) **To ensure access to high-quality health care for rural women, including through increased training of midwives;**

(e) **To ensure the equal participation of rural women and girls in policymaking processes on disaster mitigation and climate change;**

(f) **To implement the Climate Change Act of 2016 in a manner that prioritizes women's rights.**

### Indigenous women

44. The Committee notes with concern that indigenous women in the State party, including Endorois women, have limited access to traditional lands owing to the failure to implement the ruling of 2010 by the African Commission on Human and Peoples' Rights, which recognized their rights to ancestral land in the Rift Valley, and the lack of consultation with them. It is also concerned about reports of violence, including killings against indigenous women and girls in Baringo County during cattle raids.

45. **The Committee recommends that the State party:**

(a) **Take immediate steps to implement the ruling of the African Commission on Human and Peoples' Rights regarding the rights of the Endorois people to their ancestral land, and ensure consultation with Endorois women during this process;**

(b) **Take all measures necessary to protect indigenous women and girls, including those in Baringo County, from violence and theft, and ensure that the perpetrators are prosecuted and adequately punished.**

### Women and girls with disabilities

46. The Committee is concerned about the failure to protect the health, sexual and reproductive rights of women with disabilities and their lack of access to justice, limits on their legal capacity and ability to own property and violence against them, including the practice of forced sterilization.

47. **The Committee recommends that the State party:**

(a) **Protect the rights of women and girls with disabilities, ensuring that they have equal access to housing, justice, health care and other basic services**

**and social protection, and promote their autonomy, access to community services and participation in political and public life;**

(b) **Protect women and girls with disabilities from all forms of violence and ensure that the perpetrators are prosecuted and adequately punished;**

(c) **Abolish the practice of sterilizing women and girls with disabilities by force and provide remedies for the victims;**

(d) **Guarantee women and girls with disabilities the right to own property and conduct awareness-raising on their rights.**

### Older women

48. The Committee is concerned about the failure to protect older women from violence and abuse and the lack of data on their situation.

49. **The Committee recommends that the State party:**

(a) **Protect older women, including those accused of witchcraft, from all forms of violence, including lynching, and ensure that the perpetrators are prosecuted and adequately punished;**

(b) **Collect and publish data on the situation of older women, including with regard to gender-based violence directed against them.**

### Marriage and family relations

50. The Committee notes that the Marriage Act of 2014 consolidated all marriage regimes in the State party, and that other laws intended to promote equality in marriage have been passed. It remains concerned, however, about:

(a) The fact that the Marriage Act is not in conformity with the Constitution, in that it recognizes polygamy in the context of customary and Muslim marriages;

(b) The requirement to prove contribution to marital property under the Matrimonial Property Act of 2013, which discriminates against women who face challenges proving the existence of and quantifying non-monetary contributions;

(c) The removal of the requirement of spousal consent for transactions relating to marital property;

(d) Discriminatory inheritance laws, including rules governing intestate succession that directly discriminate against women and girls, and the fact that the Law of Succession Act of 1981 renders a widow's inheritance rights void if she remarries, with no parallel provision for widowers;

(e) Discrimination against women married under Islamic law, including the right of men to divorce their wives unilaterally, and reports of abusive behaviour, including the withholding of divorce certificates and forced concessions in return for the divorce certificate;

(f) The requirement under the Marriage Act for all marriages to be registered, failing which they are considered invalid, the strict timelines set for registration, the requirement of consent by both spouses to register and the detrimental effects that that has on the rights of women, including those in polygamous marriages;

(g) Women's lack of access to justice, including upon divorce, owing in particular to their limited resources.

51. **The Committee recommends that the State party:**

(a) **Repeal section 7 of the Matrimonial Property Act and recognize the principle of equality in all areas of marriage, including property;**

(b) **Repeal section 11 of the Land Laws (Amendment) Act of 2016 and reinstate the requirement of spousal consent for any transactions relating to marital property as it was under the Land Registration Act of 2012;**

(c) **Repeal and replace the Law of Succession Act and ensure equal rights between women and men with regard to inheritance and property laws;**

(d) **Ensure equality between women and men in Muslim marriages and upon divorce, abolish the practice of a husband's right to divorce his wife unilaterally and require compulsory registration of all divorces;**

(e) **Raise awareness of the detrimental effects of polygamy on women and bring the Marriage Act into line with article 45 (3) of the Constitution, by prohibiting polygamous marriages;**

(f) **Allow for the division of property during marriage in order to protect the property interests of women when their husbands take subsequent wives;**

(g) **Review the requirement for registration of all marriages in a manner that protects the rights of women, including through awareness-raising and facilitation of registration in rural areas and a progressive timeline for registration and by allowing one spouse to register the marriage, thereby placing the onus on the other spouse to contest its validity;**

(h) **Ensure the full implementation of the Legal Aid Act.**

### Optional Protocol to the Convention and amendment to article 20 (1) of the Convention

52. **The Committee encourages the State party to ratify the Optional Protocol to the Convention and to accept, as soon as possible, the amendment to article 20 (1) of the Convention concerning the meeting time of the Committee.**

### Beijing Declaration and Platform for Action

53. **The Committee calls upon the State party to use the Beijing Declaration and Platform for Action in its efforts to implement the provisions of the Convention.**

### 2030 Agenda for Sustainable Development

54. **The Committee calls for the realization of substantive gender equality, in accordance with the provisions of the Convention, throughout the process of implementation of the 2030 Agenda for Sustainable Development.**

### Dissemination

55. **The Committee requests the State party to ensure the timely dissemination of the present concluding observations, in the official languages of the State party, to the relevant State institutions at all levels (national, regional and local), in particular to the Government, the ministries, Parliament and the judiciary, to enable their full implementation.**

**Technical assistance**

56. **The Committee recommends that the State party link the implementation of the Convention to its development efforts and that it avail itself of regional or international technical assistance in this respect.**

**Ratification of other treaties**

57. **The Committee notes that the adherence of the State party to the nine major international human rights instruments [1] would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance, to which it is not yet a party.**

**Follow-up to the concluding observations**

58. **The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 31 (a) and (d), 39 (e) and 51 (a) above.**

**Preparation of the next report**

59. **The Committee invites the State party to submit its ninth periodic report in November 2021. The report should be submitted on time and, in case of delay, cover the entire period up to the time of its submission.**

60. **The Committee requests the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (see HRI/GEN/2/Rev.6, chap. I)).**

[1] The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities.